IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2248 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YUSUFBHAI MUSABHAI PATEL (VOHRA) - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MR RAKESH B SHARMA for Petitioner(s) : 1,
MR LR POOJARI, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/06/2007

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order of detention dated 3.1.2007 passed by the Commissioner of Police, Vadodara City in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (“PASA” for short).

2. The Detaining Authority was of the opinion that it is necessary to place the petitioner under preventive detention in order to prevent breach of public order. The detaining authority formed such an opinion on the basis of involvement of the petitioner in one incident of breach of Immoral Traffic (Prevention) Act, 1956.

3. Learned advocate for the petitioner submitted that the alleged involvement of the petitioner in an isolated case was not sufficient to permit the detaining authority to form an opinion that his detention is necessary to prevent breach of public order. It was submitted that except said complaint filed against the petitioner, there was no other material available with the detaining authority to form such an opinion. It was submitted that before the detaining authority there were no further statements of any witnesses suggesting that the activities of the petitioner are prejudicial to public order.

4. On the other hand, learned AGP Shri Poojari appearing for the respondents, placing reliance in the case of **Promod B. Nayak v. State**, 2007 (1) GLR 796, opposed the petition. He submitted that the petitioner is involved in a very serious offence of indulging in immoral trafficking. His activities are a threat to public order since his continued involvement in such activities can be hazardous to

public health since prostitution would spread dangerous diseases like HIV and AIDS.

5. In a separate order passed by this Court today in a matter of similar nature in Special Civil Application No.10963 of 2007, this Court has made the following observations:

> "6. Having heard learned advocates appearing for the parties and having perused the material on record, I find that the opinion formed by the detaining authority is not sustainable in the eye of law. As noted earlier, except for one isolated incident involving the petitioner in breach of the provisions of Immoral Traffic(Prevention) Act, 1956, there is no further material to suggest that the activities of the petitioner are in breach of public order.
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> 7. Though there was material on record before the detaining authority to suggest that the petitioner was involved in running a brothel and was thus involved in the business of supplying women for immoral trafficking, the question is whether that by itself can be stated to be the activity in breach of public order. Such offences though pose problem of law and order, concept of public order is much different. The detaining authority undoubtedly relied on certain statements recorded by the police authorities while investigating the said offence in which it is stated that the petitioner had assaulted members of the public in public view thereby spreading terror. Here again the moot question is whether one or two such isolated instances would categorise the activities of the petitioner as threat to public order.
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> 8. In the case of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and another**, reported in AIR 1989 Supreme Court 491, the Apex Court observed that merely because a

person is bootlegger, he cannot be preventively detained under PASA unless his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. It was observed that a person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct,the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of any offence will not necessarily come within the purview of public order.

8.1 In case of **Ashokbhai Jivrajbhai @ Jivabhai Solanki v. Police Commissioner, Surat & ors.** reported in 2000(1) GLH 393, Division Bench of this Court examined validity of detention order of the detenue under PASA against whom certain criminal complaints were pending. In the said case, Division Bench relied on the earlier decision of Apex Court reported in AIR 1966 SC 740 and held that case of the detenue falls under maintenance of law and order and not public order.

9. From the above discussion, I find that there was no sufficient material before the detaining authority to come to the conclusion that the activities of the petitioner are in breach of public order. The opinion formed by the detaining authority therefore, is not sustainable in eye of law. The detention order therefore, based on such an opinion cannot be sustained, same is required to be quashed."

6. In the present case, additionally I also find that there are no statements of any witnesses

suggesting that the petitioner is a head-strong person spreading terror in the locality on account of which independent witnesses are not coming forward to give statements. The activities of the petitioner may be prejudicial to law and order, the question however is whether the same can be categorized as prejudicial to public order. Before the detaining authority there was no material to suggest that the magnitude of the activities of the petitioner or his repeated or persistent involvement in such activities would permit the detaining authority to form an opinion that the activities of the petitioner are prejudicial to public order and to prevent breach thereof, he is required to be placed under detention.

7. In view of the above discussion, I find that the impugned order of detention cannot be sustained and the same is required to be quashed and set aside.

8. Under the circumstances, the impugned order of detention dated 3.1.2007 is quashed. Since the order of detention is quashed, the detenu shall be released forthwith unless involved in any other criminal case or detention. With these directions, the petition is disposed of. Rule is made absolute accordingly.

Direct service is permitted.

[AKIL KURESHI, J.]

(vjn)